United Nations CAT/C/NZL/QPR/7

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the seventh periodic report of New Zealand*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In paragraph 21 of its previous concluding observations (see CAT/C/NZL/CO/6),[1] the Committee requested New Zealand to provide further information regarding areas of particular concern identified by the Committee in paragraph 9, concerning the national preventive mechanism, paragraph 10, on the Independent Police Conduct Authority, and paragraph 15, on solitary confinement and seclusion in mental health facilities. Noting that a reply concerning the information sought by the Committee was provided on 3 June 2016 (CAT/C/NZL/CO/6/Add.1), the Committee expresses appreciation for the State party's responses on those matters and the substantive information provided. In view of that information, the Committee still considers that the recommendations included in paragraphs 10 and 15 mentioned above have not yet been implemented (see paras. 26 and 19, respectively, of the present document).

Articles 1 and 4

2. With reference to the Committee's previous concluding observations (para. 8), please provide detailed information on the measures taken to incorporate all the provisions of the Convention into the State party's legislation.[2] Please indicate the measures adopted by the State party to ensure that torture or complicity in torture are subject to appropriate penalties commensurate with the seriousness of the crime, in accordance with article 4 of the Convention.

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

[2] See CAT/OP/NZL/1, para. 19.

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Article 2[1]

3. Please provide information on the steps taken, and procedures in place, to ensure that all detainees are informed of their rights at the time of arrest and of the charges against them.[4]

4. With regard to the Committee's previous concluding observations (para. 9), and taking note of the State party's follow-up replies,[5] please provide information on the activities and achievements of the national preventive mechanism and its entities with respect to the prevention of torture and ill-treatment during the period under review. Please also provide updated information on the material, human and budgetary resources allocated for the effective functioning of the national preventive mechanism and the five entities composing it.[6]

5. Further to the Committee's previous concluding observations (para. 11), please provide information on the legislative, administrative and other measures taken to prevent and combat all forms of violence against women, including domestic violence.[7] Please also provide updated information on the protection and support services available to victims of gender-based violence in the State party. Please include statistical data, disaggregated by the age and ethnicity or nationality of victims, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence since the consideration of the sixth periodic report of New Zealand.

6. Please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous report. Please also provide information on:[8]

(a) Any new legislation or measures that have been adopted to prevent, combat or criminalize trafficking in persons;

(b) The measures adopted to ensure that victims of trafficking have access to effective remedies of reparation;

(c) The signature of agreements with countries concerned to prevent and combat trafficking in persons.

Article 3

7. With reference to the previous concluding observations (para. 18), please provide information on the measures that have been taken to revise national legislation on refugees and asylum seekers to fulfil all obligations under article 3 of the Convention.[9] Please also provide detailed information on the measures adopted to ensure that the specific needs of vulnerable persons seeking asylum in New Zealand, including victims of torture and/or trauma, are fully taken into consideration and addressed in a timely manner.

8. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or may be

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[1] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by State parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

[4] See CAT/OP/NZL/1, paras. 42-43 and 72-73; and A/HRC/30/36/Add.2, paras. 26 and 34.

[5] See CAT/C/NZL/CO/6/Add.1, paras. 2-8.

[6] See CAT/OP/NZL/1, paras. 12-15.

[7] See CCPR/C/NZL/CO/6, paras. 29-30.

[8] See CAT/C/NZL/CO/6, para. 12, CCPR/C/NZL/CO/6, paras. 39-40; and CRC/C/OPSC/NZL/CO/1.

[9] See also CCPR/C/NZL/CO/6, paras. 35-36.

tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous report. Please provide details on the grounds on which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on the type of appeal mechanisms that exist, any appeals that have been made and the outcome of those appeals. Do such appeals have suspensive effect?

9. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances where the State party has offered such diplomatic assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring.

10. Please provide information on the legislative and other mechanisms taken to improve the identification and determination of statelessness and introduce procedural safeguards to improve access to the procedure to determine statelessness.

Articles 5-9

11. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention.

12. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties.

13. Please clarify the mutual judicial assistance treaties or agreements that the State party has entered into with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture and ill-treatment. Please provide examples.

Article 10

14. Please provide up-to-date information on educational programmes that have been developed by the State party to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing cases of torture and ill-treatment and, if so, please provide information on the methodology.

15. Bearing in mind the Committee's previous concluding observations (para. 17), please detail the training methodology and programmes used when instructing law enforcement officials, prison staff and other security forces in the use of electrical-discharge weapons or any other less-than-lethal device. Please detail any incidents that have occurred as a result of using such devices, and provide information detailing the outcomes of any investigations into such incidents. Has the State party revised the regulations governing the use of such weapons?[10]

16. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?

[10] See CCPR/C/NZL/CO/6, paras. 33-34.

Article 11

17. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices or on any arrangements for custody, in particular those that may have been introduced since the consideration of the previous report.[11] Please indicate the frequency with which they are reviewed.

18. In the light of the previous concluding observations (paras. 13-14), please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and on the occupancy rate of all places of detention.[12] Please describe the measures taken by the State party to reduce prison overcrowding, including alternatives to imprisonment, both before and after trial.[13] Please inform the Committee on the measures taken to address concerns regarding prolonged pretrial detention[14] and the general conditions of detention in some police stations gazetted as jails[15] and other facilities.[16] What concrete measures have been taken to address concerns regarding health-care provision[17] and the excessive resort to strip searches in prisons?[18]

19. With reference to the Committee's previous concluding observations (para. 15) and in the light of the State party's follow-up replies,[19] please indicate the measures taken by the State party to bring its legislation and practice on solitary confinement into line with international standards, in accordance with rules 43 to 46 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[20]

20. Please provide information on the efforts of the State party to meet the special needs of minors in detention, especially those in pretrial detention (para. 16).[21] Please comment on reports that there are inconsistencies in the treatment of children and young people deprived of their liberty, particularly in managing challenging behaviour, and the assertions in the 2014/15 report on national preventive mechanisms entitled "Monitoring places of detention" that the material conditions at some residences are not upholding young people's well-being and that there is a lack of access to specialist mental health treatment.

21. Please provide information about the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of law enforcement personnel, and about the number of complaints made in this regard and their outcome. What preventive measures have been taken?[22]

22. Please provide statistical data regarding deaths in custody during the period under consideration, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of the death. Please provide detailed information on the results of the investigations into those deaths and on the measures taken to prevent similar cases from occurring in the future.[23] Please indicate whether relatives received compensation in any of those cases. In particular, please provide information on the outcome of the investigations and on disciplinary and/or criminal proceedings concerning the death of Sentry Taitoko on 23 February 2014.

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[11] See CAT/OP/NZL/1, paras. 24-28, 82-90 and 110-112.

[12] See CAT/C/NZL/CO/6, para. 14; CAT/OP/NZL/1, paras. 50-52; CCPR/C/NZL/CO/6, paras. 25-26; and A/HRC/30/36/Add.2, paras. 49-62.

[13] See CAT/OP/NZL/1, paras. 33-34.

[14] Ibid., paras. 19-32.

[15] Ibid., paras. 68-71.

[16] Ibid., paras. 80-81 and 98-106. See also CCPR/C/NZL/CO/6, paras. 41-42; and A/HRC/30/36/Add.2, para. 37.

[17] See CAT/OP/NZL/1, paras. 58-65.

[18] See CAT/C/NZL/CO/6, para. 13.

[19] See CAT/C/NZL/CO/6/Add.1, paras. 27-30.

[20] See CAT/OP/NZL/1, paras. 87-88.

[21] Ibid., paras. 53-57, 66-67 and 91-97; and A/HRC/30/36/Add.2, paras. 63-66.

[22] See CAT/C/NZL/CO/6, para. 13; and CAT/OP/NZL/1, paras. 35-36.

[23] See A/HRC/30/36/Add.2, para. 39.

23. In the light of the Committee's previous concluding observations (para. 18 (d)), please provide information on how the State party will ensure that detention of asylum seekers is used only as a last resort and, where necessary, for as short a period as possible, and how it will further implement alternatives to detention.[24] Please comment on reports that the State party is using the prison system to detain asylum seekers and irregular migrants.[25]

24. Please provide information on the procedural and substantive safeguards that are applicable in situations of involuntary or non-consensual commitment of persons with disabilities on health-care grounds.[26] Please specify the number of persons deprived of liberty in psychiatric hospitals and in other institutions for persons with psychosocial disabilities, including care homes. What is the situation with regard to the use of alternative forms of treatment, such as community-based rehabilitation services and other outpatient programmes? How many people currently receive such alternate forms of treatment?[27]

Articles 12 and 13

25. Please provide statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints of acts of torture or ill-treatment recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanction applied. Please provide examples of relevant cases and/or judicial decisions.

26. Taking note of the Committee's previous concluding observations (para. 10) and the State party's follow-up replies,[28] please provide detailed information on the measures taken to ensure the institutional and functional independence of the Independent Police Conduct Authority.[29] Please provide information on the measures taken to establish an effective complaints mechanism for persons deprived of their liberty.[30] What concrete measures have been taken to restrict the wide discretion of the Attorney General with regard to prosecutorial decisions for crimes against torture?[31]

27. Please indicate what measures the State party has put in place to ensure that all allegations relating to "Operation Burnham" — a raid of two villages in the Baghlan province in Afghanistan by the New Zealand Defence Forces on 22 August 2010 — will be fully investigated and addressed.

Article 14

28. With regard to the previous concluding observations (para. 19), please provide information on the progress made by the Claims Resolution team and other bodies that can provide compensation, apologies and other remedies in dealing with historic experiences of cruel treatment, and the status of those claims.

29. Please provide information on the steps taken to amend the provisions of the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 that might be inconsistent with the aim of the Convention (para. 19 in fine). Please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to the victims of torture or their families since the consideration of the previous report. This should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to

[24] See CAT/OP/NZL/1, paras. 22 and 23 (d); CCPR/C/NZL/CO/6, paras. 37-38; and A/HRC/30/36/Add.2, paras. 67-77.
[25] See A/HRC/30/36/Add.2, para. 71.
[26] Ibid., para. 86.
[27] Ibid., paras. 78-88.
[28] See CAT/C/NZL/CO/6/Add.1, paras. 9-20.
[29] See CAT/C/SR.1292, paras. 25, 28, 37 and 49.
[30] See CAT/OP/NZL/1, paras. 44-45.
[31] Ibid., paras. 22 and 23 (b).

victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

30. With reference to the Committee's previous concluding observations (para. 20), please provide updated information on any changes to the State party's position on withdrawing its reservation to article 14 of the Convention.[32]

Article 15

31. Please provide information on concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility of evidence obtained through torture. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

32. Please comment on reports of premature surgery and other medical treatment to which intersex children are subjected (see the submissions of Intersex Trust Aotearoa New Zealand, and StopIGM.org and Zwischengeschlecht.org to the Committee against Torture in 2017). Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

Other issues

33. Please provide updated information on the measures taken by the State party to respond to threats of terrorism, and describe if and how those anti-terrorism measures have affected human rights safeguards in law and in practice. Please explain how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with the relevant Security Council resolutions, in particular resolution 1624 (2005). Please provide information on the relevant training given to law enforcement officers, the number of persons convicted under such legislation, the legal safeguards and remedies available to persons subjected to anti-terrorism measures in law and in practice, whether there have been any complaints of non-observance of international standards and the outcome of those complaints.[33]

General information on other measures and development relating to the implementation of the Convention in the State party

34. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

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[32] Ibid., paras. 19 and 23 (a).

[33] See CCPR/C/NZL/CO/6, paras. 13-14.